IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3198 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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LAKSHYA ENTERPRISE PVT. LTD.

Versus

GENERAL MANAGER

Appearance:

MR TANVISH U BHATT for Petitioner.

Mr. UR. Bhatt, AGP for Respondent Ns.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 16/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the certificates and orders at Annexure 'C' (26-5-2001), Annexure 'D' (10-7-2001), Annexure 'E' (18-7-2001), and Annexure 'G' (22.11.2001), in so far as the authorities under the Gujarat Sales Tax Act have not granted the petitioner the benefit as per the limits of sales-tax exemption demanded by the petitioner. The petitioner had applied for the sales-tax incentives under the Government Resolution dated 16th October 1990. The incentives are to be granted to the units eligible under the said resolution in accordance with the terms and conditions laid down in the resolution. The exemption limit is to be computed with reference to the 'eligible fixed capital investment', which is also defined in the said resolution. For instance, 'eligible fixed capital investment' is defined to mean investment, inter alia, on the land = The cost of land would be the actual price paid for the land to the extent needed for the industrial project inclusive of legal (transfer) charges incurred for acquisition/purchase/transfer. Similarly, the 'New building' means a building required for the project and office building at the site, excluding guest house and staff quarters. The cost of the new building shall be calculated as per the norms prescribed by the State Level Subsidy Committee or the actual cost whichever is less. Similarly, the 'eligible fixed capital investment' includes investment in new plant and machinery and imported second-hand machinery and installation expenditure including the electrification subject to the limits set out in the resolution.

2. The petitioner had applied for the sales-tax incentive under the aforesaid resolution. The respondent authorities, particularly the Office of the Industries Commissioner at Gandhinagar and the District Industries Centre, Baroda, issued certificates calculating the amount of investment and the amount of the incentive available to the petitioner under the above scheme. The petitioner is aggrieved by such calculations on the ground that the authorities have calculated less amount than the amount which the petitioner is entitled to have calculated in accordance with the aforesaid resolution, and that the cost of investment has been reduced by the authorities by taking into account irrelevant factors.

3. At the hearing of this petition, Mr. Tanvish Bhatt has submitted that the petitioner had purchased land admeasuring 12962 sq.metres of land because apart from the construction of the factory building and the

office building, the petitioner was required to grow trees that the scheme itself contemplated in Clause 7(a) of the resolution dated 16.10.1990 that the industrial unit availing of the sales tax incentives shall install and effectively operate and maintain pollution control measures, as per the standards prescribed and approved by the competent authorities in this regard. Mr. Bhatt has, therefore, also referred to the consent order dated 28th February 2000 issued by the Gujarat Pollution Control Board requiring the petitioner to plant at least 3 varieties of trees along with the boundaries of the industrial premises with a density of not less than 1000 trees/acre.

Of course, the consent order further states that the industrial effluent shall conform to the standards prescribed and shall be evaporated in M.S. Jacketed Vessel for steam generation.

4. As regards the cost of building, it is stated that about 70 per cent of the cost of the building was already paid by the time the unit commenced production within the time limit under the scheme and that the remaining 30% payment was made to the contractor within 7 months, but the liability to pay the amount was already incurred.

It is further submitted by Mr. Bhatt that similarly for the plant and machinery also substantial part of the price was paid within the time limit and that the balance amount was paid subsequently but the liability to pay the balance price was also incurred within the time limit.

5. Mr. Bhatt has invited our attention to the letter dated 25-9-2001 from the petitioner to the General Manager, District Industries Centre, Annexure 'F' to the petition regarding the details of the investments made, and has also relied on the decision of this Court in Vishal Limes Pvt.Ltd Vs. General Manager, District Industries Centre and Others, 117 Sales Tax Cases Page 154, in support of his contention that the expression "actual price paid" or "acquired and paid" means that the capital investment relates to the acquisition of assets for consideration for which liability has been incurred to be discharged in present or in future and that actual payment of the price is not a condition precedent for availing the benefit of the incentives under the scheme. He submitted that the person purchasing the assets with capital already obtained from the financial institution is entitled to have the cost of the assets valued

according to the price paid through the financial institutions, similarly if the supplier of goods or the building contractor has suppled goods or put up construction and has agreed to defer the receipt of amount to a future date, the applicant is not disentitled to have the price of the assets taken into account for the purpose of calculating eligible fixed capital investment under the aforesaid resolution.

6. In reply, Mr. U.R. Bhatt, learned AGP for the respondents has made the following submissions on the basis of the instructions contained in the letter dated 29th June 2002 from the Joint Commissioner of Industries:

> "The case of M/s. Vishal Limes Pvt.Ltd., Dist. Mehsana is in respect of the 1986.91 Pipe line scheme in which there is specific provision that the fixed assets acquired and paid during the operative period would be considered for incentives. Honorable High Court has given verdict in favour of the petitioner and ordered to give incentives on all fixed assets created irrespective of the fact that the outstanding amount towards the assets is paid during the operative period of scheme or thereafter.
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> While the present case of M/s. Lakshya Enterprises Pvt.Ltd.,Dist. Vadodara is under 1990-95, Pipe line scheme in which it is specific laid down that the assets acquired under DGP Scheme/Hire Purchase Scheme or instalment system would be eligible excluding the cost of interest. Thus in present case provision has been made to consider the assets which are acquired but not paid under DGP Scheme/Hire purchase Scheme or instalment Scheme. The petitioner's assets are not acquired under such scheme.
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> In view of the above Vishal Lime Care is under 80-91 scheme in that Scheme no provision has been made vide petitioner's case is under 90-95 scheme which is different case. Thus both the schemes are different hence Honorable High Court Judgment in M/s. Vishal Lime cannot be applicable in this case."

7. Having heard the ld. counsel for the parties, we are of the view that the respondents have not correctly appreciated the principle laid down by this Court in Vishal Limits Pvt.Ltd and another, 117 STC 154. This Court has laid down the general principle in the

aforesaid decision that the word "paid" has to be understood in the sense acquirer/purchaser has incurred a legal obligation to make payment for such acquisition whether he discharges such obligation immediately or undertakes to discharge the same as a debt at a later date. It has been laid down in the aforesaid decision that it does not make any difference as far as the calculation of the eligible fixed asset investment is concerned whether the price for the assets is paid from his own funds or from the funds borrowed from a financial institution or a bank or whether the assets are acquired on account of the credit given by the supplier of goods or by the provider of services like building construction. In view of the above principle laid down by this Court in the case of Vishal Limes Pvt.Ltd. (Supra), it does not make any difference whether the capital investment is made under the 1980-91 scheme or under the 1990-95 scheme. The important thing is uniformly applying the principle of taking into account even deferred payment provided the liability to pay was incurred before the relevant date.

8. In view of the above discussion, the petition is allowed and the respondents are directed to reconsider the petitioner's case for calculation of the eligible fixed asset investment in light of the principle laid by this Court in Vishal Limes Pvt.Ltd Vs. District Industries Centre and Others, 117 Sales Tax Cases 154. It shall be done after giving the petitioner a reasonable opportunity of being heard. It would be open to the petitioner to make a representation pointing out all the facts which have relevance to the question of calculation of the eligible investment for the purposes of the sales-tax incentives under the scheme. If the petitioner makes such a representation by 30th October 2002, the respondents shall reconsider their decision within three months from the date of receipt of the representation. If the petitioner's representation is accepted, the respondents shall give the consequential effect to such decision.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

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[M.S. Shah, J.]

[K.A. Puj, J.]